HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.1244 of 2006
Date of decision : 26.3.2007

Smt.Lakhwinder Kaur and others .....Appellants

versus

Kuljinder Singh and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.R.K.Joshi, Advocate for the appellants.
Mr.Sandeep Bansal, Advocate for the respondents.

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ORDER

HEMANT GUPTA, J.

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court, whereby the shortfall in the area of the land purchased by the plaintiffs was ordered to be made good by proportionate price of the land.

Vide sale deed dated 15.12.1993, the land measuring 2 kanals 16 marlas described by boundaries was sold to the appellant-plaintiffs. It is the case of the plaintiffs that actual measurement of the aforesaid plot was short by 10 marlas. The learned First Appellate Court has found that where the property is sold described by boundaries, the vendee is only entitled to proportionate price of the area which has fallen short. The vendor cannot be directed to make good the said deficiency from another land owned by the vendor. To return such finding, the learned First Appellate Court has relied upon the Division bench Judgment of this Court reported as "***Tara Singh versus Charan Kaur and others, 1967, P.L.R.-34".*** It has been held that stipulation regarding title of the vendor

really amounts to warranty of title which is implied in law under Section 55 (2) of the Transfer of Property Act, 1882. It was held that such condition does not result in an obligation which can be implied in law that the seller binds himself to make compensation to the buyer should there be found to be a defect in his title by parting with some other land in lieu of the one in which the tile has been found to be defective.

Therefore, in the present case, the plaintiffs cannot claim other land of the defendants. It is well so when the sale was of a plot described by the boundaries. The shortfall in the area cannot be made good as the boundaries are not found to be incorrect in any manner. The learned First Appellate Court rightly compensated the plaintiffs by passing a decree for recovery of the price of the land which has fallen short.

Learned counsel for the appellant then argued that the sale was found to be of deficient area, but the learned First appellate Court has wrongly granted interest from the date of filing of the suit. It should have been from the date of sale itself. I find merit in the aforesaid argument. Since by sale itself, the possession of the less area was given to the plaintiffs, the plaintiffs are entitled to interest on the proportionate sale price from the date of sale itself.

In view of the above, the decree passed by the learned First Appellate Court is modified so as to grant interest @ 6% from the date of sale. The decree in respect of other relief is affirmed.

The appeal stands disposed of accordingly.

(HEMANT GUPTA)
JUDGE

March 26, 2007
**mohinder*